



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 053547
		Application Number 10/564,956
		Filed December 5, 2007
		First Named Inventor Takashi Namari et al.
		Art Unit 3747
		Examiner David E. Hamaoui
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>		
<p>I am the</p> <p><input type="checkbox"/> applicant /inventor. _____ /Dennis M. Hubbs/ Signature</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) _____ Dennis M. Hubbs Typed or printed name</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 59,145 _____ (202) 822-1100 Telephone number</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____ August 19, 2010 Date</p>		
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		
<p><input type="checkbox"/> *Total of 1 forms are submitted.</p>		



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: **Takashi NAMARI et al.**

Art Unit: **3747**

Application Number: **10/564,956**

Examiner: **David E. Hamaoui**

Filed: **December 5, 2007**

Confirmation Number: **5396**

For: **CRANK ANGLE DETECTOR OF INTERNAL COMBUSTION ENGINE AND
IGNITION TIMING CONTROLLER**

Attorney Docket Number: **053547**
Customer Number: **38834**

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: AF

August 19, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Request is filed concurrent with a Notice of Appeal in compliance with 37 C.F.R. §41.31. Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

REMARKS

Claims 6 and 9-11 are currently pending and stand rejected. In the amendment of July 16, 2010, applicants incorporated the features of dependent claim 8 into independent claim 6, which was entered by the examiner. Claim 6 therefore stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Ohira* (US Pub. 2002/0112711) in view of *Kelly* (US Patent 5,623,912) and further in view of *Ono* (US Patent 6,032,649).

The relevant incorporated features of independent claim 6 are as follows:

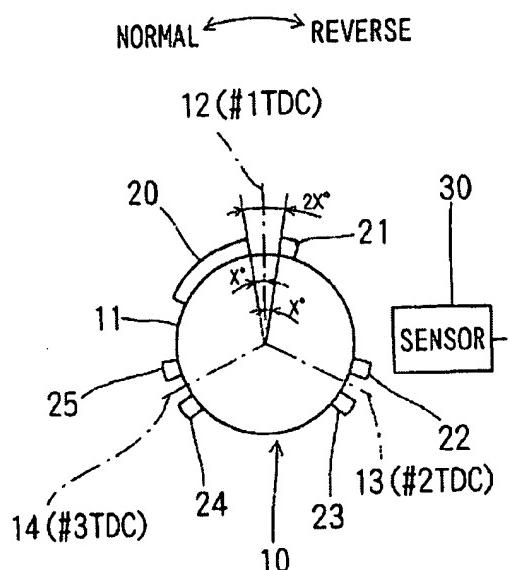
An ignition timing controller, comprising:

...wherein the respective rear end positions of all of the plurality of detection portions are located at equivalent angle intervals in the rotating direction of said rotor.... (Emphasis added.)

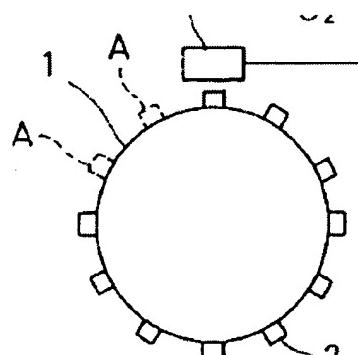
The examiner submits that the above features are disclosed or made obvious by *Ono* and *Ohira*.¹ The examiner contends that:

The modification [of *Ono* and *Ohira*] was that the rotor of *Ohira* can be filled in with more teeth (to collect more data, for example). That such teeth may be desirable and arranged to “fill” the circumference of the rotor at equivalent angular intervals is learned from *Ono*. (See Continuation Sheet of Advisory Action dated August 3, 2010.)

Thus, the examiner is using *Ohira* for the elongated tooth feature and *Ono* to disclose teeth “at equivalent angular intervals.” Please see the portions of FIG. 1 of *Ohira* and FIG. 1 of *Ono* reproduced below for convenience.



(FIG. 1 of *Ohira*)



(FIG. 1 of *Ono*)

¹ Please see rejection of claim 8 in the final office action dated April 19, 2010.

As shown above, *Ohira* does disclose an elongated tooth and *Ono* does disclose *most* of the teeth to be at constant angles. However, *Ono* discloses that:

...at least one of the portions to be detected is missing.... (Abstract, emphasis added.)

Ono goes on to recite:

In the foregoing embodiment, although two continuous portions to be detected among a plurality of portions to be detected of the rotary body have been missing, one portion to be detected can be missing or three or more portions to be detected can also be missing. (Column 10, lines 26-30.)

According to the Abstract of *Ono*:

In the case where a reference time point to start a measurement of a time until a control start time point to start a predetermined control of the engine is a rotational angle time point of the crankshaft when no pulse is generated from the pickup due to a missing portion to be detected, a timer is allowed to measure the time from a generation time point of the pulse generated from the pickup just before the non-pulse generation period of time during which no pulse is generated until the control start time point.

Thus *Ono* always discloses a missing portion. Further, as recited above, this missing portion is necessary for *Ono* to function according to its intended purpose.

According to MPEP 2143.01, a proposed modification of the reference by the examiner cannot render the prior art unsatisfactory for its intended purpose:

V. THE PROPOSED MODIFICATION CANNOT RENDER THE PRIOR ART UNSATISFACTORY FOR ITS INTENDED PURPOSE

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)

In the present case, the examiner is modifying *Ono* in a manner which would render it unsatisfactory for its intended purpose; i.e. including projection portions that are all equally spaced apart. If this was done to *Ono*, it would not be possible that *Ono* could detect the missing portion as there would be no missing portion. As discussed above, *Ono* teaches having at least one missing projection.

As such, applicants respectfully submit that the examiner's rejection is improper and ask that the application be allowed.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

Application No. 10/564,956
Art Unit 3747

Pre-Appeal Brief
Attorney Docket No. 053547

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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DMH/rse